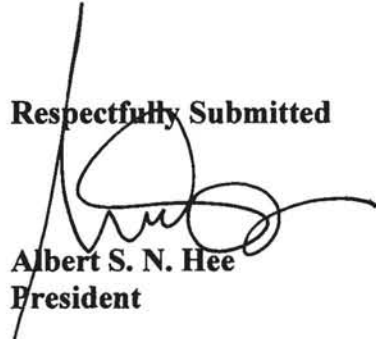


**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	WT Docket No. 10-208
Universal Service Reform - Mobility Fund)	
)	
Sandwich Isles Communications, Inc.)	
Petition for Waiver of the Commission's)	
Rules implementing reform of)	
Universal Service Support and)	
Intercarrier Compensation for)	
Rate-of-Return carriers)	
)	
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)	

SANDWICH ISLES COMMUNICATIONS, INC.
PETITION FOR WAIVER OF 47 C.F.R. 54.302.....

Respectfully Submitted


Albert S. N. Hee
President

DECEMBER 30, 2011

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SUMMARY

Sandwich Isles Communications, Inc. ("Sandwich Isles" or "SIC") is a Rural Local Exchange Carrier (RLEC) that was granted a "Benefit" License by the State of Hawaii, Department of Hawaiian Home Lands (DHHL) on May 9, 1995, for "... the purpose of advancing the rehabilitation and the welfare of native Hawaiians." The license was established to provide broad band telecommunication services of all types (including but not limited to local, intrastate, interstate and international telephone; medical and educational links; and electronic data transmission) to Licensor's land in a timely manner. The issuance of this License was essential for Sandwich Isles to obtain capital funds needed to construct and operate the company. By virtue of the license granted by DHHL, Sandwich Isles has assumed the obligation for the State of Hawaii to provide all wireline communications services on the Hawaiian Home Lands, which were designated "Tribal lands" in the Commissions recent Report and Order.¹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ In the Matter of Connect America Fund, WC Docket No. 10-90, et al, Report and Order FCC 11-161, pg 48, fnt. 197.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

To avoid this outcome, and as justification for Sandwich Isles Petition for Waiver, it is important to recognize that SIC plays an integral role with the State of Hawaii in rehabilitating native Hawaiians and resettling the Hawaiian Home Lands. For that reason, the Petition will also demonstrate the unique circumstances and obligations placed solely on SIC by the State of Hawaii to assist in fulfilling its trust responsibility stemming from the enactment by the U.S. Congress of the Hawaiian Homes Commission Act of 1920, which trust responsibility was transferred from the federal government at statehood.

These obligations center on deployment of needed communications infrastructure to extend broadband networks in unserved areas of the state. The result will be provision of broadband services and a robust broadband platform to foster economic development and creation of jobs, particularly on the more remote “neighbor islands” of the state that surround Hawaii’s economic hub of Oahu. Expansion of Hawaii’s economy throughout the “neighbor islands” is essential to jobs creation and resettlement of the Hawaiian Home Lands, 98% of which are located outside Oahu. Only a portion of the planned 20,000 home sites on the Hawaiian Home Lands have been completed and occupied.

Another pertinent factor arguing for grant of the waiver is that the insular State of Hawaii has tremendous cost barriers that have historically curtailed communications infrastructure deployment on the “neighbor islands” particularly. The lack of critical communications infrastructure is well documented. Action was taken by the Hawaii state legislature and the Hawaii Public Utility Commission in the early 1990s to counter the practice of underinvestment, which was embedded in the business plan of Hawaii’s incumbent local exchange carrier. The action taken in concert by the legislature and the Commission led to the formation of SIC in 1995 for the purpose of modernizing Hawaii’s communications infrastructure with full support of the Hawaiian delegation.

One of the initial challenges set before SIC was to engineer and deploy with the assistance of the USDA Rural Utilities Service a statewide transport network. A fiber-optic network with sufficient bandwidth capacity to meet future demands was needed throughout the state to compensate for the lack of infrastructure, particularly on the “neighbor islands.” SIC’s goal was to penetrate the most remote areas of the state where much of the Hawaiian Home Lands remained yet to be developed and resettled by native Hawaiian residents. This was an important first step to begin fulfilling the mandate of the HHCA of 1920 – more than 80 years after its enactment.

During the ensuing 15 years, SIC with the help of RUS and other commercial financing has successfully deployed a statewide transport and switching communications platform that will take Hawaii well into the 21st century. SIC continues to keep pace with DHHL development of the Hawaiian Home Lands. As was previously discussed, creating a broadband communications platform to facilitate economic development throughout the “neighbor islands” will be critical to the rehabilitation of native Hawaiians and resettlement of the homelands. Jobs must be created

to allow native Hawaiians the opportunity to live and work from the homelands. This is the promise of broadband as was fully explored in the development of the Commission's National Broadband Plan, which also highlighted the plight of native Americans residing on Tribal lands. Penetration of voice and broadband communications on Tribal lands lags significantly behind the rest of the nation.

The integral role played by Sandwich Isles with the State of Hawaii Department of Hawaiian Home Lands in developing the 203,000 acres of homelands scattered across the six major islands of Hawaii argue for exemption from all of the universal service support and intercarrier compensation reforms ordered by the Commission. Rehabilitation and resettlement of the Hawaiian Home Lands have been extremely slow due to the lack of needed infrastructure. Granting SIC's Petition for Waiver is necessary to ensure that incoming residents of Hawaiian Home Lands have adequate voice and broadband services consistent with the obligations of SIC's license for communications services authorized by the State of Hawaii. The public interest at large is also benefited with grant of the waiver. That action taken by this Commission will serve our national interests by enabling the continued fulfillment of the trust obligations set in motion by the U.S. Congress with the passage of the Hawaiian Homes Commission Act of 1920.

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SANDWICH ISLES COMMUNICATIONS, INC.
PETITION FOR WAIVER OF 47 C.F.R. 54.302

Sandwich Isles Communications, Inc. ("Sandwich Isles" or "SIC"), pursuant to Section 1.3 of the Commission's Rules, respectfully requests an expedited review and Order from the Wireline Competition Bureau¹ for a waiver of the universal service and inter-carrier compensation reform rules, including Sections 54.302 adopted by the Commission in its Report and Order released November 18, 2011.² Sandwich Isles is a local exchange carrier with a study

¹ In the Matter of Connect America Fund, WC Docket No. 10-90, et al, Report and Order FCC 11-161, pg 179, para 544. ("Order")

² By this Petition for Waiver, Sandwich Isles does not waive any rights that may be available now or in the future.

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area located on the Hawaiian Homelands (“HHL”) throughout the 6 major islands of Hawaii.³ Absent this waiver, the rules result in [REDACTED] in Universal Service support and inter- and intrastate access revenues for SIC and a severe threat to the continued availability of wireline voice service as well as broadband service for residents and businesses located on HHL.

The public interest would not be served by application of the rules absent this waiver to Sandwich Isles. A series of Exhibits⁴ will provide each of the information requests set forth in Paragraphs 539 and 542 of the Order that are not addressed within the body of the Petition. Exempting Sandwich Isles from recently adopted rule changes is consistent with Section 254(b)(3) of the Telecom Act and will avoid regulatory uncertainty over the next several years as Universal Service and intercarrier compensation continue on a course of reform. Sandwich Isles’ continued operation and completion of its build out are critical to the ability of the State of Hawaii to meet the trust responsibilities established by Congress in 1921. Without the waiver requested in this Petition, the beneficiaries of the trust will be without the communications services necessary to make development, resettlement, and rehabilitation of the trust lands possible.

For the purposes of this waiver, Sandwich Isles recognizes that Section 54.302 is now an effective rule and the usual burdens and precedents apply to any waiver, amplified by the specific information specified in the Order. Nevertheless, in the course of evaluating this waiver Petition Sandwich Isles urges the Commission to recognize the investments and expenses it

³ The Hawaiian Homelands will be considered a Tribal Lands pursuant to the revisions to Section 54.5 adopted by the Order. Order, Appendix A.

⁴ Exhibit C includes maps of the HHL, which clearly highlight the inaccuracy of the National Broadband maps and their failure to properly capture the Sandwich Isles Study Area.

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incurred to expand service to fulfill the requirements of its exclusive license from DHHL are legitimate; that the level of these costs is comparable to what any prudent carrier would have incurred to build facilities that the state wanted built;⁵ and that the facilities were approved and built before there were any alternative providers of voice service.

I. THE RELEVANT PHYSICAL, OPERATIONAL AND DEMOGRAPHIC FACTORS IN THE HAWAIIAN HOMELANDS DEMONSTRATE THAT THE PUBLIC INTEREST WILL BE SERVED BY WAIVER OF \$250 PER LINE PER MONTH CAP CONTAINED IN SECTION 54.302

In its Report and Order adopting the Connect America Fund, the Commission included a new Section 54.302 which phases in a \$250 per line per month limit on Universal Service support.⁶ Because Sandwich Isles current support level exceeds that cap by a material amount it will, absent timely waiver, experience a significant reduction in revenue. [REDACTED]
[REDACTED] and with the result that residents of the Hawaiian Homelands will no longer be assured of continuation of voice and broadband service. Sandwich Isles requests that the Commission waive Section 54.302 for a ten year period.

Waiver of the Section 54.302 cap at this time is necessary to ensure that residents and business on HHL will continue to receive voice and broadband service. Implementing the

⁵ The unusually high level of expense necessarily incurred to serve rural Hawaii independently verified in the USF waiver petition filed by Hawaiian Telcom in Hawaiian Telcom Inc., Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules, Dec. 31, 2007 ("HT USF Petition").

⁶ Order paras. 272-279 In adopting the cap, the Commission apparently relied in major part on the comment of the State Members of the Joint Board regarding the price of broadband service provided by satellite. *See*, note 451. Whatever the comparability of satellite service in the contiguous states, the footprint of the satellite carriers does not yet effectively cover Hawaii.

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Universal Service and intercarrier compensation rule changes that have been adopted by the Commission will result without justification in a significant and very rapid phase down of support. [REDACTED]

[REDACTED]. These projected outcomes are the result of SIC operating in a very high-cost to serve Study Area that is scattered throughout the most remote regions of Hawaii and that cannot be sustained without adequate levels of Universal Service support and intercarrier compensation.

The Commission Order correctly recognized that “there may be legitimate reasons why certain companies have extremely high support amounts per line. For example, some of these extremely high-cost study areas exist because states sought to ensure a provider would serve a remote area.”⁸ The cited example describes precisely the situation faced by the state of Hawaii in the 1990s as it became frustrated with the refusal or failure of the then incumbent telephone

⁷ The financial forecasts reflect only the effects of the rules that are currently in effect. They do not reflect any revenue losses from any future changes that may occur as part of the FNPRM, including the proposed regression analysis effects, Appendix H of the Order.

⁸ Order at para. 278.

company, GTE Hawaiian Telephone Company (“GTE”), to provide modern communications service to remote, high cost areas of Hawaii, including the Hawaiian Homelands.

Likewise today, there is no reasonable expectation that an alternative provider will replace Sandwich Isles service in the Hawaiian Homelands. Since the inception of Sandwich Isles, three of four facilities based wireline carriers have gone bankrupt. Sandwich Isles is the lone exception. The three companies that have filed for bankruptcy include the incumbent, a CLEC and a RLEC. In 1989, the Hawaii State Legislature requested the Hawaii Public Utilities Commission study GTE Hawaiian Telephone’s continued ability to provide an adequate level of service at reasonable prices given the then newly emergence of competitive long distance. The 1991 report foretold the extreme difficulties the incumbent would have which were further compounded with the emergence of competition in local service. Hawaii’s incumbent carrier’s long history of neglect of the outer islands and rural areas and its recent emergence from bankruptcy, there can be no reasonable expectation that Hawaiian Telcom would expand its services on to all areas of HHL throughout the state, to ensure that residents receive adequate voice and broadband service. Additionally the National Broadband maps do not recognize the separate and distinct status of the HHL. For purposes of this waiver and the rules, the Commission recognizes HHL as “Tribal lands”. The Hawaiian Homeland Commission recognizes Sandwich Isles as the exclusive provider of wireline communications services. In addition, despite Hawaii having one of the highest mobile penetration rates, mobile wireless carriers have not provided “reasonably comparable” voice or broadband service and in fact do not provide any service to the remote HHL areas located primarily on the outer islands of Hawaii.

II. HAWAIIAN HOMES COMMISSION ACT OF 1920 AND THE REHABILITATION AND RESETTLEMENT OF NATIVE HAWAIIANS

A. BACKGROUND

In 1921, while Hawaii was a United States Territory, Congress enacted the Hawaiian Homes Commission Act (“HHCA”)⁹ to rehabilitate native Hawaiian people, particularly in returning them to the land to maintain traditional ties to the land. The Hawaiian politicians who testified in favor of the act specifically referred to the devastation of the Hawaiian population, the loss of the land, and the need for Hawaiians to be able to maintain a traditional lifestyle centered on agriculture. The HHCA set aside approximately 203,500 acres of undeveloped rural lands for native Hawaiian use. The HHCA, with amendments, is still in effect today.

From 1921 until 1959 these federal trust lands were administered by the Hawaiian Homes Commission (“HHC”) with oversight by the United States Department of Interior. In 1959 when Hawaii became a state, the Federal Hawaii Admission Act required the incorporation of the HHCA into the Hawaii State Constitution and transferred the trust lands to the state while retaining federal oversight.¹⁰

The Department of Hawaiian Home Lands (DHHL) was created by the Hawaii State Legislature in 1960 for the purposes of administering the Hawaiian Home Lands (HHL) program

⁹ Hawaiian Homes Commission Act 1920, 48 Stat. 108.

¹⁰ Hawaii Statehood Act, 73 Stat. 4 This historical description is taken largely from S. Rep. 108-85, 108th Cong. 1st Sess. (2003) Note that this portion of the Hawaii Constitution may not be amended without consent of the United States, and the United States retains the right to bring suit for breach of the trust imposed. The HHCA is now considered Hawaiian Constitutional law, rather than federal law. As such, state statutes which conflict with the HHCA are preempted. *Kepo`o v. Watson*, 952 P.2d 379, 87 Hawaii 91 (1998). (“*Kepo`o*”) Preemption does not extend to ordinary police powers *State v. Jim*, 907 P.2d 754 (1995).

and managing the Hawaiian Home Lands trust. Although state lands, the HHC, acting through the DHHL, retains exclusive management authority for HHL.¹¹ Despite being part of the Hawaii State Constitution, the Congress of the United States continues to reserve the right to alter, amend or repeal the provisions of the HHCA.¹²

The mandate that the HHCA be included as part of the Hawaii State Constitution created a situation unique to Hawaii for the regulation of public utilities on HHL. For example, only the HHC can authorize a carrier to install facilities on the HHL. All other wireline carriers, aside from SIC, cannot serve geographic areas in which the company does not have the legal ability to provide telephone services, since such legal authority would be required to establish an area of “operations” consistent with the definition of study area. For wireline service providers, easements and rights-of-ways are critically important in establishing operations. Without the ability to construct local distribution facilities from the central office location to a consumer premises and interconnect its central offices, a telephone company cannot provide service.

Locating facilities on HHL requires easements that can only be granted by DHHL, since the right of eminent domain cannot be exercised on HHL. Sandwich Isles is the first and only company to have easements throughout the HHL necessary to provide communications service. No other wireline provider of voice or broadband communications, including the cable operator in Hawaii, can legally serve native Hawaiians residing on HHL.

¹¹ *Ahuna v. Department of Hawaiian Home Lands*, 640 P. 2d 1161, 1168 (1982).

¹² State of Hawaii Constitution, Art. XII, Sec.1; HHCA section 223.

B. PURPOSE OF THE HAWAIIAN HOMES COMMISSION ACT

Section 101, "Purpose", of the Hawaiian Homes Commission Act explains the aims of the Hawaiian Homelands program as follows:

- (a) The Congress of the United States and the State of Hawaii declare that the policy of this Act is to enable native Hawaiians to return to their lands in order to fully support self-determination for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians.
- (b) The principal purposes of this Act include but are not limited to:
 - (1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may *live, farm, ranch, and otherwise engage in commercial or industrial or any other activities* as authorized in this Act;
 - (2) Placing native Hawaiians on the lands set aside under this Act in a prompt and efficient manner and *assuring long-term tenancy* to beneficiaries of this Act and their successors;
 - (3) Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity;
 - (4) Providing *adequate amounts of water and supporting infrastructure*, so that homestead lands will *always be usable and accessible*; and
 - (5) Providing *financial support and technical assistance* to native Hawaiian beneficiaries of this Act so that by *pursuing strategies to enhance economic self-sufficiency and promote community-based development*, the traditions, culture and quality of life of native Hawaiians shall be forever self-sustaining. (*emphasis added*)
- (c) In recognition of the solemn trust created by this Act, and the historical government to government relationship between the United States and Kingdom of Hawaii, the United States and the State of Hawaii hereby acknowledge the trust established under this Act and affirm their fiduciary duty to faithfully administer the provisions of this Act on behalf of the native Hawaiian beneficiaries of the Act.
- (d) Nothing in this Act shall be construed to:
 - (1) Affect the rights of the descendants of the indigenous citizens of the Kingdom of Hawaii to seek redress of any wrongful activities associated with the overthrow of the Kingdom of Hawaii; or

(2) Alter the obligations of the United States and the State of Hawaii to carry out their public trust responsibilities under section 5 of the Admission Act to native Hawaiians and other descendants of the indigenous citizens of the Kingdom of Hawaii. [L 1990, c 349, §1]

One of the goals of the Hawaiian Homes Commission Act was to place native Hawaiians on set aside lands in a prompt and efficient manner and to assure long-term tenancy to beneficiaries of this Act and their successors. Clearly the goal of facilitating a “long-term tenancy” for resettlement of the HHL was contingent upon also fostering economic development for economic self-sufficiency of the native Hawaiians. Almost 100 years after the passage of the HHCA, broadband communications have become essential components for attracting new business and creating jobs for potential native Hawaiian residents of HHL. Attracting business and creating jobs are critical to the successful resettlement and perpetuation of residence on the HHL.

III. FORMATION OF SANDWICH ISLES COMMUNICATIONS, INC.

Sandwich Isles is a beneficiary (native Hawaiian)-owned rural Local Exchange Carrier (“RLEC”) providing telecommunications services to the HHL. The HHL consists of approximately 70 non-contiguous parcels, which total 203,500 acres on the 6 major Hawaiian Islands and are administered by the State of Hawaii, Department of Hawaiian Homelands (“DHHL”).¹³ The establishment of Sandwich Isles in 1995 was in conjunction with the State’s efforts during the 1990s to improve telephone service in rural areas. Sandwich Isles is the only

¹³ The history and legal status of the HHL are described further below. Maps showing the general location of the HHL on each Island are attached as Exhibit C.

RLEC operating in Hawaii that the Commission has authorized to participate in NECA tariffs and pools and receive Universal Service support based on its own costs.

In 1992, the Hawaii Public Utilities Commission (“HPUC”) initiated a proceeding to investigate “...the telephone service provided by GTE Hawaiian Telephone (“GTE”) in the rural areas of the State of Hawaii.”¹⁴ At that time GTE was offering only multi-party service in some areas. In 1994, the Hawaii Legislature enacted Act 80, which directed the HPUC to improve the telecommunications service in the rural areas by authorizing another telephone company to provide service if necessary.¹⁵ In November 1994, the HPUC found telecommunications service in the rural areas of the state “less than adequate.”¹⁶ In December 1994, the HPUC ordered GTE to show cause why the HPUC should not authorize an alternative telecommunications provider for the rural areas.¹⁷ In December 1995, the HPUC allowed telecommunications carriers other than GTE to seek authorization to provide telecommunications service in the rural areas.¹⁸ In July 1996, the HPUC selected TelHawaii, Inc., an RLEC, to provide telecommunications service in the Ka’u area of the island of Hawaii.¹⁹ This Commission granted TelHawaii a study area waiver in August 1996.²⁰ TelHawaii’s filing for bankruptcy and its ultimate demise was a result of its inability to obtain an exclusive right to serve a geographic area. Despite the high cost to improve

¹⁴ HPUC Doc 7497; Order No 11886, September 29, 1992.

¹⁵ Hawaii Revised Statutes (“HRS”) Section 269-16.9 (h).

¹⁶ HPUC Doc 7497; Order No. 13626, November 2, 1994.

¹⁷ HPUC Doc 94-0346; Order No. 13679, December 12, 1994.

¹⁸ HPUC Doc 94-0346; Order No. 14415, December 13, 1995.

¹⁹ HPUC Doc 94-0346; Order No. 14789, July 15, 1996.

²⁰ *TelAlaska, Inc. and TelHawaii, Inc., Petition for Waiver of Section 36.611, 36.612, 61.41(c)(2) and the Definition of “Study Area”,* Aug 16, 1996, AAD 96-93. (“TelHawaii”) TelHawaii eventually abandoned its efforts to provide service after an adverse court decision in litigation with GTE.

service in that area, the incumbent, GTE Hawaiian Tel marshaled the resources to insure TelHawaii's demise.

During this same period, the DHHL was planning to significantly accelerate the development of the HHL. This required a solution to the high cost and limited availability of an acceptable level of telephone service on those HHL parcels being developed. Over 98% of HHL are located in rural areas, the vast majority of which were still undeveloped.²¹ Historically, GTE required DHHL to pay the total cost of the local loop infrastructure to obtain telephone service. This resulted in some populated areas of HHL not having any type of phone service. In 1993, after the HPUC initiated the proceeding focusing on the poor quality of rural phone service, GTE told DHHL that it would only provide party line service unless DHHL paid the costs of upgrading GTE's switching facilities as well as the local loop.²²

In May 1995, DHHL issued the first and only telecommunications license ("License") to Waimana Enterprises, Inc. ("Waimana") to finance, construct and operate a modern telecommunications network serving all of the HHL parcels. Waimana formed a wholly-owned subsidiary, Sandwich Isles to meet the wireline voice requirements of the License.²³ In November 1997, recognizing that DHHL had authorized Sandwich Isles to serve HHL, the HPUC issued Sandwich Isles a Certificate of Authority ("COA") to provide IntraLATA and Intrastate

²¹ In part because of Sandwich Isles efforts to make modern and affordable telecommunications services available, DHHL expects to increase the number of residents on the HHL to approximately 20,000.

²² Sandwich Isles Communications, Inc., Petition for Waiver, AAD 97-82, July 7, 1997, see Opposition to Application for Review at 10, and Michael Crozier affidavit (March 27, 1998).

²³ Partial assignment of the License was made to Sandwich Isles Communications, Inc. to provide IntraLata and Intrastate telecommunication services on January 15, 1996.

telecommunications service to “lands administered by DHHL.”²⁴ On December 17, 1997, Sandwich Isles’ tariff for local and intrastate service became effective.

On May 14, 1997 the DHHL designated Sandwich Isles as an Eligible Telecommunications Carrier (“ETC”).²⁵ DHHL reaffirmed the ETC designation on June 2, 1998.²⁶ On December 9, 1998, the HPUC also designated Sandwich Isles an ETC “...for the service area consisting of lands administered by the DHHL...”²⁷ In addition, the HPUC has annually certified to the FCC and USAC that Sandwich Isles is a “rural incumbent local exchange carrier, also classified as an eligible telecommunications carrier,” that should continue to receive federal high-cost support funds for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

On October 29, 2004 the Commission released its order granting the GTE (by then Verizon) Application for Review of the Common Carrier Bureau’s 1998 grant to Sandwich Isles of waivers of the incumbent local exchange carrier requirements that allowed it to participate in the NECA tariffs and pools and receive Universal Service support. The Commission concluded

²⁴ *Application of Sandwich Isles Communications, Inc. for Authorization to Provide IntraLata and Intrastate Telecommunications Services Within and Between Hawaiian Home Lands Throughout the State of Hawaii Pursuant to HRS Section 269-16.9*, Doc. No. 96-0026, Order No. 16078, Nov. 14, 1997. (“HPUC COA Order”) A copy of this order was filed in AAD 97-82, Letter from Sylvia Lesse and Margaret Nyland to Magalie Roman Salas, Secretary, Nov. 19, 1997.

²⁵ Ltr from Kali Watson, Chairman, HHC to Common Carrier Bureau, FCC, May 14, 1997.

²⁶ Ltr from Kali Watson, Chairman, Hawaiian Homes Commission to Universal Service Administrative Company, June 2, 1998. (“Watson 1998 letter”).

²⁷ *Application of Sandwich Isles Communications, Inc. For Designation as an Eligible Telecommunications Carrier in the State of Hawaii pursuant to FCC Universal [sic] Report and Order No. 96-45*, Doc. No. 98-0317, D&O No. 16737, Dec. 9, 1998.

that Sandwich Isles should have applied for a study area waiver, but stayed the effect of its order provided Sandwich Isles filed such a waiver Petition within 60 days.²⁸

The Petition for waiver was timely filed and in May 2005 the Bureau granted Sandwich Isles a “Study Area Waiver” for all of the HHL except a small portion that had been served by GTE in 1997.²⁹ The Bureau recognized that Sandwich Isles was in the process of constructing a backbone infrastructure to “connect all of the Hawaiian home lands (sic) on all six of the major Hawaiian Islands.”³⁰ The Study Area Waiver Order thus found that the public interest would be served by grant of the waiver: “...because of the significant investment to provide service in areas and to customers that did not previously have service....Sandwich Isles’ construction schedule involves deploying backbone switching and transport infrastructure.”³¹ Sandwich Isles operating and maintenance schedule requires supporting not only the backbone switching and transport but also the local loop infrastructure.

The many residents that supported Sandwich Isles’ study area waiver Petition quickly recognized the great improvement in affordability and service.³² The Chairman of the Hawaiian Homes Commission commented on Sandwich Isles’ study area waiver petition that: “Prior to

²⁸ *GTE Hawaiian Telephone Company, Inc., Application for Review of a Decision by the Common Carrier Bureau, Petition for Waiver of Section 36.611 of the Commission’s Rules and Request for Clarification*, Memorandum Opinion and Order, 19 FCC Rcd. 22268 (2004).

²⁹ *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission’s Rules*, Order 20 FCC Rcd 8999 (WCB 2005), *applic. rev. pending*. (“Study Area Waiver Order”).

³⁰ Study Area Waiver Order at para. 19.

³¹ *Id.*

³² *See generally*, comments of HHL residents cited in Reply Comments of Sandwich Isles Communications, Inc., Feb. 22. 2005. pp. 2-4.

issuing SIC the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay GTE Hawaiian Tel to install the infrastructure. Today these beneficiaries enjoy the same service that is available in urban areas with Sandwich Isles paying the infrastructure costs.”³³

IV. IMPLICATIONS FOR HAWAIIAN HOME LANDS OF GEOGRAPHIC ISOLATION

From the beginning there were problems in administration of the HHL because of the absence of a definitive description of "available lands" designated by the Act; continuing with apparently illegal land withdrawals or diversions; and complicated by inadequate maintenance of land inventory records. As a result, DHHL does not have a complete or accurate inventory of the 203,000 acres designated under the Act, nor of the 190,000 acres for which DHHL now claims responsibility.

The original lands were hardly conducive to the agriculture practiced by earlier native Hawaiians. Sugar companies had lobbied the government to exclude lands used for sugar production, then the state's economic engine. With no money to develop these lands for agriculture, many lots were used strictly for housing. With the majority of lots being located on islands other than Oahu, there was an immediate geographic isolation from the state economic activity primarily located on Oahu. In the first 70 years of the program, only 3,000 families were placed on Hawaiian Home Lands.

³³ Letter from Micah A. Kane, Chairman, Hawaiian Homes Commission to Marlene H. Dortch, FCC, Dec. 23, 2004.

In a survey conducted in 2008, the number of DHHL applicants increased 57% since 1995 with residential applications highest on Oahu, with 9,187 residential applications. The island with the next highest number of applications is Hawaii, with 2,974 residential applications. These applications for residence on Oahu reflect the desire to be in a geographic location without isolation and conducive to economic livelihood.

The same survey indicates there have been more than 5,000 Applicants for DHHL land from 2003 to 2008 when the previous survey was conducted. There were also over 5,000 Applicants that have been on the waiting list for over 20 years. In 2008 about 41% of Applicants were over the age of 55, and almost half of those are over 65. Although the total number of DHHL beneficiaries, both Lessees and Applicants, has increased over 7% since the last time this survey was done in 2003, the wait list has grown faster than the ability to provide awards.

Another challenge for the native Hawaiian population is the disparity in income and economic levels in comparison to the general population. Below are statistics from several surveys indicating this economic characteristic.

Poverty Level & Percentage of Households below HUD Guidelines for Housing Assistance

Survey/Study	All Hawaii Households	Hawaiian & Part-Hawaiian Households	DHHL Lessee Households
Lessee Survey 2008: Estimated % of Households with Incomes below 80% of HUD Median	NA	NA	51
Housing Policy Study of 2006: Estimated % of Households with Incomes below 80% of HUD Median	45	46	70
US Census: % of Households below Poverty	11	16	13

V. SERVING HAWAIIAN HOMELANDS PRESENTS UNIQUE CHALLENGES

A. SANDWICH ISLES' SERVICE AREA CONSISTS OF RURAL, LOW DENSITY PORTIONS OF VOLCANIC ISLANDS SEPARATED BY DEEP OCEAN

The Hawaiian Islands, unlike islands of the other 49 states, are not part of the continental land mass, but are the result of volcanic deposition from the ocean floor, and are separated from each other by open seas up to two miles deep, subject to swift currents. Construction of inter-island facilities is thus expensive and involves an extensive permitting process. Environmental restrictions designed to protect marine life severely limit the time during which undersea facilities are allowed to be constructed. The thin top soil lays on volcanic rock, coral and sand. Despite its reputation for a usually balmy climate, Hawaii is subject to recurring severe tropical storms which easily destroy aerial telecommunications plant. As all locations are not far from the ocean, telecommunications facilities are subject to the corrosive tropical marine environment.

As a result of these factors, modern, reliable communications infrastructure is exceptionally expensive to construct and operate anywhere in the state. These challenges were accurately described at greater length in the Petition of Hawaiian Telcom for waiver of the Universal Service Fund rules.³⁴

The high cost of physical facilities in rural Hawaii is compounded by the low population density of most of the state outside the metropolitan area of Honolulu. Because of the lack of adequate infrastructure, only a portion of the currently planned 20,000 home sites have been completed and occupied. As a result, traffic volumes to and from Sandwich Isles' customers are relatively low for an area spread out over more than 400 miles.

Sandwich Isles is a much younger company than other rural telephone companies serving high-cost areas, so that the slow pace by which the HHL have been developed has left Sandwich Isles to operate with a relatively small number of access lines much longer than originally expected. Because substantial infrastructure, including both physical plant and administrative capability is needed to begin service to a small subscriber base, the HHL per unit costs are unavoidably high. As subscriber and access line counts increase, the resulting traffic volumes will spread the common infrastructure costs over a wider base, thereby reducing Sandwich Isles' unit cost.

³⁴ HT USF Petition; Federal Communications Commission, Public Notice, Comment Sought on Hawaiian Telcom, Inc.'s Petition for Waiver of High Cost Universal Service Support Rules, WC Doc. No. 08-4, DA 08-131, Jan. 18, 2008 ; Comments of Sandwich Isles Communications, Inc., February 19, 2008.

B. THE SUCCESSIVE OWNERS OF THE DOMINANT HAWAIIAN LEC HAVE HISTORICALLY UNDERINVESTED IN FACILITIES TO SERVE THE OUTER ISLANDS AND RURAL AREAS

.Although GTE claimed to trace Hawaiian Telephone Company's operating authority to the Hawaiian Monarchy, neither it nor the successor owners of Hawaiian Telcom, have invested in adequate facilities to serve the outer islands and the rural areas of Hawaii, including the HHL. The lack of adequate service led the legislature to authorize the state commission to certify additional telephone companies.³⁵

The inadequate rural service was especially severe in the Hawaiian Home Lands. At best, GTE would only offer to provide multi-party service unless the subscriber or DHHL paid the cost of converting to single party service.³⁶ The reluctance of GTE to invest in facilities to serve the Hawaiian Homelands eventually led DHHL to issue a license to Waimana Enterprises, Sandwich Isles' parent, to serve the entire homelands.

³⁵ "We passed Act 80 which lead to the Hawai'i Public Utility Commission opening the way for additional telephone companies to serve our *neglected* rural areas with modern infrastructure capable of delivering advanced services." Letter from Robert N. Herkes, State Representative, 5th District to Marlene H. Dortch, FCC, CC Doc. 96-45, Jun. 29, 2005

³⁶ Affidavit of Michael Crozier, Sandwich Isles Reply to Late-Filed Comments and Opposition, AAD 97-42, Oct. 2, 1997.

VI. A CONTINUATION OF CURRENT UNIVERSAL SERVICE SUPPORT IS NEEDED TO GROW BROADBAND SERVICE ON THE HHL

Very little has been accomplished over the past 100 years to bring native Hawaiians closer to a sustained existence on set aside lands, where cultural traditions can remain an integral part of everyday life. The challenges associated with resettling the HHL are significant. DHHL has a heavy obligation before it to bring infrastructure and utilities to unserved HHL areas.

Likewise, the challenge to Sandwich Isles is formidable. This is due in no small part to the lack of economic opportunity prevalent on HHL today that deter native Hawaiian beneficiaries from resettling the land. As was recounted, the geographic isolation of the HHL works against economic development. Native Hawaiians cannot freely choose to resettle these remote areas. Even though large waiting lists give evidence of a desire, the HHL are without job opportunities sufficient to provide an economic base for continued subsistence of native Hawaiian families.

The National Broadband Plan clearly summarizes the many benefits that will accrue to communities as a result of broadband service becoming readily available in America. The Native American groups, including native Hawaiians, have historically been significantly challenged by the federal government's "exile policies," supposedly aimed at resettling these groups on Tribal lands with the ability to develop local economies and perpetuate their cultures. In reality, the economics work against a successful resettlement of the HHL.

To counter the effects of geographic isolation, the FCC should grant SIC's Petition and facilitate creation of a robust broadband communications platform on HHL. With broadband services readily available in these areas native Hawaiians can embark on a mission to develop their own businesses and attract other new businesses to further economic development on the HHL, so a base for economic stability and growth can be attained. Without an economic base, native Hawaiians will be unable to successfully resettle the lands set aside for them through the HHCA of 1920.

The challenge before native Hawaiians is extreme. A relatively small group of native Hawaiians remain to serve as a nucleus for resettlement. And to deploy reliable and secure underground broadband infrastructure in these remote areas of Hawaii represents tremendous construction and cost challenges. It is clearly evident from Sandwich Isles experience that costs of constructing communications infrastructure in Hawaii are among the highest anywhere in the world. Admittedly, the HHL are remote, considering their location on the islands of Hawaii. The bigger reality, however, is that the entire state of Hawaii is but a "smudge" in the middle of the Pacific Ocean, at least 2,600 miles from the nearest continental land mass. Mobilizing construction equipment, shipping and warehousing materials, provisioning a qualified work force for the complex construction effort, and penetrating various types of near impossible terrain create extreme cost barriers to underground broadband infrastructure construction. These factors explain to a large extent why the previous incumbent Local Exchange Carriers serving Hawaii failed to invest in critical communications infrastructure, and why the current incumbent lost market share and only recently emerged from bankruptcy.

A continued commitment by means of “specific, predictable, and sufficient” Universal Service support is needed to overcome the financial obstacles inherent in constructing critical, backbone infrastructure for HHL. A provision of the Telecom Act of 1996, Section 254 (b)(3), established the goal of making available to all Americans at affordable rates advanced communications services. The current levels of Universal Service support and intercarrier compensation flowing from the NECA Traffic Sensitive pool have enabled SIC to fulfill this provision of the Act. Exempting Sandwich Isles from recently adopted rule changes is consistent with this goal of Section 254 and will avoid continued regulatory uncertainty destined for our industry over the next several years as Universal Service and intercarrier compensation continue on a course of reform.

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VII. CONCLUSION

Sandwich Isles' Petition presents unique public interest factors that are relevant only to its service area; especially the critical role the provision of modern telecommunications will play in realizing the long delayed goal of providing an opportunity for native Hawaiians to successfully establish a homestead on Hawaiian Home Lands. In the modern environment, the availability of voice and broadband communications services is critical to the economic feasibility of remote, rural communities. Although the primary responsibility as fiduciary for the HHL held in trust was transferred to the state in 1959, the United States retains a duty to ensure that the state complies with the compact embedded in the Admissions Act.

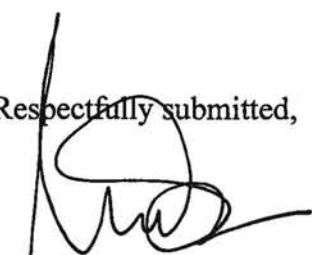
By granting the waiver based on the merits of this Petition, the Commission will be fulfilling its role as an agency of the United States to regulate in a manner which permits the state to fulfill its trustee functions. Sandwich Isles' continued operation of these facilities and the completion of its build out are critical to the ability of the state to meet the trust responsibilities established by Congress in 1921, but only now beginning to be realized. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respectfully submitted,



Albert S. N. Hee, President

Sandwich Isles Communications, Inc.

GVNW Consulting, Inc.

Alan W. Pedersen
Master Consultant

December 30, 2011

Exhibit A

Financial Impacts of Order

- Five Year Pro Forma
[Item G. para 539]

REDACTED

Exhibit B

Corporate Financial Information

- **Audited Financial Statements & Notes**
[Item G. para 542, subpoint 12]
- **Procedures for Allocating Costs**
[Item G. para 542, subpoint 11]
- **Corporate Operations Expenses**
[Item G. para 542, subpoint 4]
- **Outstanding Loans**
[Item G. para 542, subpoint 13]

REDACTED

Exhibit C

Study Area Characteristics & Services

- Density Characteristics

REDACTED

- & Maps

[Item G. para 542, subpoint 1]

- End User Rate Plans

[Item G. para 542, subpoint 5]

- Services & Subscriber Percentages

[Item G. para 542, subpoint 10]

REDACTED